

**§ 15.12 Claim; who may file; location of filing.**

A claim for indemnity under this part may be filed by the publisher of the chart in question, his duly authorized agent, or legal representative. The claim shall be filed with the Chief Counsel of the FAA, 800 Independence Ave. SW., Washington, DC 20591.

**§ 15.13 Notification requirements.**

A claim for indemnity shall not be considered by the FAA unless:

(a) The publisher notifies the Chief Counsel of the FAA, within the time limits described in paragraph (a) or (b) of this section, of the publisher's receipt of service of a complaint in any proceeding, federal or state, in which it appears that indemnity under section 1118 may be appropriate. The notice shall be accompanied by a description of the basis on which the publisher asserts that indemnity under section 1118 is appropriate.

(b) For claims in which the underlying cause of action against the publisher arose on or after December 19, 1985, and prior to the effective date of this subpart, the notice described in paragraph (a) of this section is received within 30 days of the effective date of this subpart.

(c) For claims in which the underlying cause of action against the publisher arose on or after the effective date of this subpart, the notice described in paragraph (a) of this section is received within 30 days of the publisher's receipt of service of the complaint.

**§ 15.14 Conduct of the action.**

(a) The publisher shall act in good faith to defend any claim or action against it that is or could become the subject of a notification described in § 15.13(a) of this part.

(b) Upon receipt of the notification described in § 15.13 of this part, the FAA, if it determines that indemnity under section 1118 is appropriate, may require the publisher, as a condition of indemnity, to implead the United States as a third-party defendant in the action, and arrange for the removal of the action to Federal Court if necessary. The publisher shall also agree to cooperate in the defense of the action with the

United States, and shall promptly provide any additional information requested by the United States.

(c) If the FAA determines that the claim is one which will not require indemnity under section 1118, it shall so notify the publisher by registered mail, within 60 days of receiving either the notification or any requested additional information as described in this section, whichever is later.

**§ 15.15 Settlements.**

(a) Prior to settlement of a claim or an action by a publisher with another party, for which the publisher has sought, or intends to seek indemnity under section 1118, the publisher shall submit a copy of the terms of the proposed settlement to the Chief Counsel of the FAA along with a statement of its justification for the proposed settlement. The Administrator shall have 60 days to consider the proposed settlement. If the Chief Counsel does not concur with the proposed settlement terms, or does not concur that the claim is one which will require indemnity under section 1118, he shall so notify the publisher, by registered mail.

(b) In making this determination, the Chief Counsel may request the publisher to provide additional information, and will also consider whether the publisher has conducted a good faith defense of the action, and whether the proposed settlement appears to have been negotiated in good faith by the publisher. No indemnity will be available if the Chief Counsel determines that either of these conditions are not satisfied.

(c) The Chief Counsel will not approve payment on claims concerning a depiction or publication which he determines

(1) Was inaccurate within the meaning of section 1118; or

(2) Was obviously defective or deficient, within the meaning of section 1118; or

(3) Did not comply with the applicable regulatory procedure concerning that chart, map, or flight procedure.

**§ 15.16 Judgments.**

Within 5 days of the rendering of a judgment against the publisher in any proceeding, or within 30 days of the denial of an appeal, whichever is later, the publisher shall notify the Chief Counsel of its claim for indemnity with respect to the judgment. The Chief Counsel shall have 30 days to review the merits of the claim for indemnity. If the Chief Counsel determines that the claim does not satisfy the requirements of section 1118, he shall so inform the publisher, by registered mail. In making this determination, the Administrator will also consider whether the publisher conducted a good faith defense of the action.

**§ 15.17 Payment on claims.**

(a) *Source of funds.* If the Chief Counsel finds that the claim satisfies the requirements of section 1118, the FAA shall prepare an indemnity agreement concerning the claim, which shall be signed by the Chief Counsel and the publisher. The FAA shall then submit a request for an appropriation to Congress for funds to satisfy the claim. Payment shall not be effected until an appropriation is passed by Congress, and shall be made directly from the appropriated funds.

(b) *Provisions of the indemnity agreement.* The Government shall not indemnify the claimant for any punitive or exemplary damages, civil or criminal fines or any other litigation sanctions, interest on the judgment, costs, attorneys' fees, or other incidental expenses. However, the FAA will agree to indemnify for reasonable costs of appeal, including attorneys' fees, if the appeal is made at the direction of or with the concurrence of the FAA. No payment shall be recommended unless the indemnity agreement provides that the Government shall be subrogated to all claims, including third-party claims, cross-claims, and counterclaims, of the publisher.

Issued in Washington, DC on August 8, 1988.

T. Allan McArtor,  
Administrator

[FR Doc. 88-18268 Filed 8-17-88; 8:45 am]  
BILLING CODE 4910-13-M



# **Federal Register**

**Thursday  
August 18, 1988**

---

## **Part VIII**

### **Department of the Interior**

---

#### **Fish and Wildlife Service**

---

##### **50 CFR Part 20**

##### **Migratory Bird Hunting; Final Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands; Final Rule**



## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 20

## Migratory Bird Hunting; Final Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** This rule prescribes special migratory bird hunting regulations to be established for certain tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands. This season begins as early as September 1. This rule also makes final the guidelines employed to establish the special regulations.

**EFFECTIVE DATE:** This rule takes effect on September 1, 1988.

**ADDRESSES:** Comments received on the proposed special hunting regulations and tribal proposals are available for public inspection during normal business hours in Room 536, 1717 H Street, NW., Washington, DC. Communications regarding the documents should be addressed to: Director (FWS/MBMO), Room 536, Matomic Building, U.S. Fish and Wildlife Service, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Washington, DC 20240.

**SUPPLEMENTARY INFORMATION:** The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

In the July 22, 1988 Federal Register (53 FR 27728), the U.S. Fish and Wildlife Service (hereinafter the Service) proposed special migratory bird hunting regulations for the 1988-89 hunting season for certain Indian tribes, under the interim guidelines described in the June 4, 1988 Federal Register (at 50 FR 23467). The guidelines were developed in response to tribal requests for Service

recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal members and nonmembers on their reservations. The guidelines include possibilities for: (1) On-reservation hunting by both tribal members and nonmembers, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s); (2) on-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and (3) off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits. In all cases, the regulations established under the guidelines would have to be consistent with the March 10-September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada. Tribes that desired special hunting regulations in the 1988-89 hunting season were requested in the January 21, 1988 Federal Register (53 FR 1645) to submit a proposal that included details on: (1) Requested season dates and other regulations to be observed; (2) harvest anticipated under the requested regulations; (3) methods that will be employed to measure or monitor harvest; (4) steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would impact seriously on the migratory bird resource; and (5) tribal capabilities to establish and enforce migratory bird hunting regulations. No action is required if a tribe wishes to observe the hunting regulations that are established by the State(s) in which an Indian reservation is located. The guidelines have been used successfully since the 1985-86 hunting season, and they are made final in this document, as was proposed in the July 22, 1988 Federal Register (53 FR 27728).

In the July 22, 1988 proposed rule, the Service pointed out that duck hunting regulations for the upcoming season likely would be more restrictive than in the 1987-88 hunting season because of a reduced fall flight caused by drought. Recently completed surveys on the breeding ground have confirmed the expected decline. Although duck hunting regulations not have been established yet for the late season, they can be expected to be much more restrictive than last year.

## Comments and Issues Concerning Tribal Proposals

## Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin

In an August 8, 1988, letter, C.D. Besadny, Secretary, Wisconsin Department of Natural Resources, commented on the proposed 1988-89 migratory bird hunting regulations for Chippewa Indians on ceded lands in the State. Among other things, Mr. Besadny requested that the opening of the duck season be delayed one week (from September 19 to September 26), that the Canada goose season open on the same date as the duck season, and that the special scaup-only season be cancelled. In the July 22, 1988 Federal Register (53 FR 27728), the Service pointed out that the fall flight of ducks would be much lower than usual this year, and indicated that, for conservation purposes, duck harvest should be reduced. The Great Lakes Indian Fish and Wildlife Commission agreed with this request, and on August 9, 1988, notified the Service that a September 26 opening of the duck season was acceptable to the tribes. The delayed opening also will apply to coots and moorhen, and the special scaup-only season is suspended. The September 19 opening for Canada geese will proceed as proposed, with certain safeguards in place at Wisconsin's Powell Marsh.

As noted in the July 22, 1988 proposed rule, Michigan did not object to the special regulations on ceded lands in the State. However, as was the case last year, Minnesota continues to oppose special regulations for hunting by Chippewa Indians on ceded lands in the State. The Service recognizes Minnesota's concerns but for the reasons discussed in the July 22, 1988 proposed rule, believes that continued carefully regulated seasons for Chippewa Tribal members are appropriate in Minnesota, as well as in Michigan and Wisconsin. Therefore, special regulations for the 1988-89 hunting season are made final in this rule. The regulations take into account the need to reduce the harvest of ducks, and as in the past, the Great Lakes Indian Fish and Wildlife Commission will conduct a survey to monitor the migratory bird harvest by tribal members.

## Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana

The Confederated Salish and Kootenai Tribes and the Montana Department of Fish, Wildlife and Parks are continuing the negotiations



discussed in the July 22, 1988 Federal Register (53 FR 27728). The Service notes, however, that there is no disagreement over the waterfowl hunting regulations requested by the tribes for the 1988-89 season, and they are made final in this rule.

#### NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES-75-74)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the Federal Register on June 13, 1975 (40 FR 25241). A supplement to the final environmental statement "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (SEIS) 88-14" was filed on June 9, 1988, and notice of availability was published in the Federal Register on June 16, 1988 (53 FR 22582) and June 17, 1988 (53 FR 22727). In addition, an August 1985 environmental assessment entitled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the Service.

#### Nontoxic Shot Regulations

On December 14, 1987 (at 52 FR 47428), the Service proposed nontoxic shot zones for the 1988-89 waterfowl hunting season. This proposed rule was sent to all affected tribes and to Indian organizations for comment. The final rule on nontoxic shot zones for the 1988-89 hunting season was published on June 28, 1988 in the Federal Register (53 FR 24284). All of the hunting regulations covered by this final rule are in compliance with the Service's nontoxic shot restrictions.

#### Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and shall) "insure that any action authorized, funded or carried out \* \* \* is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat \* \* \*." Consequently, the Service initiated section 7 consultation under the Endangered Species Act for the proposed hunting season on Federal Indian reservations and ceded lands.

On August 8, 1988, the Division of Endangered Species and Habitat Conservation notified the Office of

Migratory Bird Management of its concurrence with the finding that the proposed action will not affect any listed species or any critical habitat.

#### Regulatory Flexibility Act, Executive Order 12291, and the Paperwork Reduction Act

In the March 9, 1988 Federal Register (53 FR 7702), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291, and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available on request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 536, Matomic Building, Washington, DC 20240. These regulations contain no collection of information subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

#### Memorandum of Law

The Service published its Memorandum of Law, required by section 4 of Executive Order 12291, in the Federal Register dated August 9, 1988 (53 FR 29897).

#### Authorship

The primary author of this final rule is Fant W. Martin, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

#### Regulations Promulgation

The rulemaking process for migratory bird hunting must, by its nature, operate under severe time constraints. However, the Service is of the view that every attempt should be made to give the public the greatest possible opportunity to comment on the regulations. Thus, when the proposed hunting regulations for certain tribes were published on July 22, 1988, the Service established the longest period possible for public comments. In doing this, the Service recognized that time would be of the essence. The comment period provided the maximum amount of time possible while ensuring that a final rule was published before the beginning of the hunting season on September 1, 1988.

Therefore, under the authority of the Migratory Bird Treaty Act of July 3,

1918, as amended (40 Stat. 755; 16 U.S.C. 703 *et seq.*), the Service prescribes final hunting regulations for certain tribes on Federal Indian reservations (including off-reservation trust lands), and ceded lands. The regulations specify the species to be hunted and establish season dates, bag and possession limits, season length, and shooting hours for migratory game birds other than waterfowl. However, final Federal frameworks for the waterfowl hunting season (opening and closing framework dates, daily bag and possession limits, etc.) are planned for publication on September 13, 1988. Because it was necessary to publish this document by September 1, 1988 most waterfowl regulations for the tribes listed here are shown as "within final Federal frameworks to be established."

Therefore, for the reasons set out above, the Service finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and this final rule, therefore, will take effect on September 1, 1988.

#### List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

Accordingly, 50 CFR Part 20 is amended as follows:

For the reasons set out in the preamble, Title 50, Chapter I, Subchapter B, Part 20, Subpart K, is amended as set forth below.

#### PART 20—[AMENDED]

1. The authority citation for Part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act sec. 3, Pub. L. 65-186, 40 Stat. 755 (16 U.S.C. 701-708h); sec. 3(h), Pub. L. 95-616, 92 Stat. 3112 (16 U.S.C. 712).

(Editorial Note.—The following annual hunting regulations provided for by § 20.110 of 50 CFR Part 20 will not appear in the Code of Federal Regulations because of their seasonal nature).

2. Section 20.110 is revised to read as follows:

§ 20.110 Seasons, limits and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

(a) Jicarilla Indian Reservation, Dulce, New Mexico (Tribal Members and Nonmembers).

(1) Ducks (including Mergansers). Season Dates: Earliest opening date and longest season permitted Pacific Flyway States under final Federal frameworks to be announced.

Daily bag and possession limits: Same as permitted Pacific Flyway States



under final Federal frameworks to be announced.

(2) *Goose Season Closed on All Species.*

(3) *General Conditions:* Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (duck stamp) signed in ink across the face. Special regulations established by the Jicarilla Apache Tribe also apply on the reservation.

(b) *Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nonmembers).*

(1) *Ducks (including Mergansers).*

*Season Dates:* Earliest opening date and longest permitted Pacific Flyway States under final Federal frameworks to be announced.

*Daily Bag and Possession Limits:* Same as permitted Pacific Flyway States under final Federal frameworks to be announced.

(2) *Canada Geese (Season closed on other geese).*

*Season Dates:* December 17–January 8.

*Daily Bag and Possession Limits:* 2 daily. Possession limit 4.

(3) *Coots and Common Moorhens (Gallinule).*

*Season Dates:* Same as for ducks.

*Daily Bag and Possession Limits:* Same as permitted Pacific Flyway States under final Federal frameworks to be announced.

(4) *Common Snipe.*

*Season Dates:* Same as for ducks.

*Daily Bag and Possession Limits:* 8 daily. Possession limit 16.

(5) *Band-tailed Pigeons.*

*Season Dates:* September 1–September 30.

*Daily Bag and Possession Limits:* 5 daily. Possession limit 10.

(6) *Mourning Doves and White-winged Doves.*

*Season Dates:* September 1–September 30.

*Daily Bag and Possession Limits:* 10 mourning and white-wing doves daily in the aggregate, of which no more than 6 may be white-winged doves.

Possession limit after opening day is 20 mourning and white-winged doves in the aggregate, of which no more than 12 may be white-winged doves.

(7) *General Conditions:* Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16

years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (duck stamp) signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

(c) *Fort Hall Indian Reservation, Fort Hall, Idaho (Nontribal Members Only).*

(1) *Ducks (including Mergansers).*

*Season Length and Dates:* Begin continuous season on October 8, with longest season permitted Pacific Flyway States under final Federal frameworks to be announced.

*Daily Bag and Possession Limits:* Same as permitted Pacific Flyway States under final Federal frameworks to be announced.

(2) *Geese (Canada, Blue, Snow, Ross', White-fronted):*

*Season Length and Dates:* Begin continuous season on October 8, with longest season permitted Idaho under final Federal frameworks to be announced.

*Daily Bag and Possession Limits:* Same as permitted Idaho under final Federal frameworks to be announced.

(3) *Common Snipe.*

*Season Length and Dates:* Same as for ducks.

*Daily Bag and Possession Limits:* 8 daily. Possession limit 16.

(4) *General Conditions:* Nontribal members will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (duck stamp) signed in ink across the face. Special regulations established by the Shoshone-Bannock Tribes also apply on the reservation.

(d) *Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nonmembers).*

(1) *Ducks (including Mergansers).*

*Season Length and Dates:* Latest closing date and longest season permitted Pacific Flyway States under final Federal frameworks to be announced.

*Daily Bag and Possession Limits:* Same as permitted Pacific Flyway States under final Federal frameworks to be announced.

(2) *Geese (Canada, Blue, Snow, Ross', White-fronted).*

*Season Length and Dates:* Latest closing date and longest season permitted Arizona under final Federal frameworks to be announced.

*Daily Bag and Possession Limits:* Same as permitted Arizona under final Federal frameworks to be announced.

(3) *Coots and Common Moorhens (Gallinule).*

*Season Dates:* Same as for ducks.

*Daily Bag and Possession Limits:* Same as permitted Pacific Flyway States under final Federal frameworks to be announced.

(4) *Common Snipe.*

*Season Length and Dates:* Same as for ducks.

*Daily Bag and Possession Limits:* 8 daily. Possession limit 16.

(5) *Mourning Doves.*

*Season Length and Dates:* September 1–11 and November 21–January 8.

*Daily Bag and Possession Limits:* September 1–11: Daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves. Possession limit is 20, of which no more than 12 may be white-winged doves. November 21–January 8: 10 mourning doves only daily. Possession limit 20.

(6) *White-winged Doves.*

*Season Dates:* September 1–11.

*Daily Bag and Possession Limits:* 6 daily. Possession limit 12.

(7) *Band-tailed Pigeons.*

*Season Dates:* October 7–November 5.

*Daily Bag and Possession Limits:* 5 daily. Possession limit 10.

(8) *General Conditions:* Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (duck stamp) signed in ink across the face. Special regulations established by the White Mountain Apache Tribe also apply on the reservation.

(e) *Colorado River Indian Reservation, Parker, Arizona (Tribal Members and Nonmembers).*

(1) *Ducks (including Mergansers).*

*Season Length and Dates:* Same as Colorado River Zone in California.

*Daily Bag and Possession Limits:* Same as Colorado River Zone in California.

(2) *Geese (Canada, Blue, Snow, Ross', White-fronted).*

*Season Length and Dates:* Same as Colorado River Zone in California.

*Daily Bag and Possession Limits:* Same as Colorado River Zone in California.

(3) *Coots and Common Moorhens (Gallinule).*

*Season Dates:* Same as for ducks in Colorado River Zone in California.

*Daily Bag and Possession Limits:* Same as Colorado River Zone in California.



**(4) Common Snipe.**

*Season Length and Dates:* Same as for ducks in Colorado River Zone in California.

*Daily Bag and Possession Limits:* 8 daily. Possession limit 16.

**(5) Mourning Doves and White-winged Doves.**

*Season Length and Dates:* Same as Colorado River Zone in California.

*Daily Bag and Possession Limits:* Daily bag limit is 10 and possession limit is 20, singly or in the aggregate of the two species.

**(6) General Conditions:** Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (duck stamp) signed in ink across the face. Special regulations established by the Colorado River Indian Tribes also apply on the reservation.

**(f) Penobscot Indian Nation, Old Town, Maine** (Tribal Members and Nonmembers).

**(1) Ducks:** Same species, season dates, season length, and daily bag and possession limits as regular duck season in Maine.

**(2) Geese:** Same species, season dates, season length, and daily bag and possession limits as regular goose season in Maine.

**(3) General Conditions:** (i) Tribal members may hunt waterfowl (ducks and geese) on Penobscot Indian Territory under special sustenance regulations during the 1988-89 hunting season. Sustenance season dates are September 17-November 30. The daily bag limit in the sustenance season is 4 ducks, including no more than 1 black duck and 2 wood ducks. The daily bag limit for geese is 3 Canada geese, 3 snow geese, or 3 in the aggregate. When the sustenance and Maine's general waterfowl season overlap, the daily bag limit for tribal members is only the larger of the two daily bag limits.

(ii) Possession limits on ducks and geese during the tribal sustenance season are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's residence.

(iii) Tribal members shall comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking, except during the sustenance season, tribal members shall be permitted to hunt one-half hour before sunrise to one-half hour after sunset.

(iv) Each tribal and nontribal waterfowl hunter 16 years of age or over must possess and carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (duck stamp), signed in ink across the face.

(v) Nontribal members hunting waterfowl on Penobscot Indian Territory shall comply with all Federal and State hunting regulations. Special regulations established by the Penobscot Indian Nation also apply on Penobscot Indian Territory.

**(g) Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin** (Tribal Members Only).

**(1) Ducks (including Mergansers).**

*Wisconsin and Minnesota Zones:*  
*Season Dates:* Begin September 26. End with closure of Wisconsin duck season.

*Daily Bag and Possession Limits:* Same as permitted Wisconsin under final Federal frameworks to be announced.

*Michigan Zone:* Same dates, season length, and daily bag and possession limits permitted Michigan under final Federal frameworks to be announced.

**(2) Canada Geese.**

*Wisconsin and Minnesota Zones:*  
*Season Dates:* Begin September 19. End with closure of Wisconsin duck season.

*Daily Bag and Possession Limits:* 3 daily. Possession limit 6.

*Michigan Zone:*

*Season Dates:* Same opening date and season length permitted Michigan under final Federal frameworks to be announced.

*Daily Bag and Possession Limits:* 3 daily. Possession limit 6.

**(3) Other Geese (Blue, Snow, and White-fronted).**

*Wisconsin and Minnesota Zones:*  
*Season Dates:* Begin September 19. End with closure of Wisconsin duck season.

*Daily Bag and Possession Limits:* Same as permitted Wisconsin under final Federal frameworks to be announced.

*Michigan Zone:* Same dates, season length, and daily bag and possession limits permitted Michigan under final frameworks to be announced.

**(4) Coots and Common Moorhens (Gallinule).**

*Wisconsin and Minnesota Zones:*  
*Season Dates:* Begin September 26. End with closure of Wisconsin duck season.

*Daily Bag and Possession Limits:* 20 daily, singly or in the aggregate. Possession limit 40.

*Michigan Zone:* Same dates, season length, and daily bag and possession

limits permitted Michigan under final Federal frameworks to be announced.

**(5) Sora and Virginia Rails.**

*Wisconsin and Minnesota Zones:*

*Season Dates:* Begin September 19. End with closure of Wisconsin duck season.

*Daily Bag and Possession Limits:* 25 daily, singly or in the aggregate. Possession limit 25.

*Michigan Zone:* Same dates, season length, and daily bag and possession limits permitted Michigan under final Federal frameworks to be announced.

**(6) Common Snipe.** Wisconsin and Minnesota Zones:

*Season Dates:* Begin September 19. End with closure of Wisconsin duck season.

*Daily Bag and Possession Limits:* 8 daily. Possession limit 16.

*Michigan Zone:* Same dates, season length, and daily bag and possession limits permitted Michigan under final Federal frameworks to be announced.

**(7) Woodcock.**

*Wisconsin and Minnesota Zones:*

*Season Dates:* September 10-November 14.

*Daily Bag and Possession Limits:* 5 daily. Possession limit 10.

*Michigan Zone:*

*Season Dates:* September 15-November 14.

*Daily Bag and Possession Limits:* 5 daily. Possession limit 10.

**(8) General Conditions:** (i) While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit. (ii) Tribal members will comply with all basic Federal migratory bird hunting regulations, 50 CFR Part 20, and shooting hour regulations, 50 CFR part 20, Subpart K. If shooting hours are changed during the late season, tribal members will observe the new shooting hours after the late season begins in the affected States. Prior to the opening of the late season, however, tribal members may hunt migratory birds from one-half hour before sunrise to sunset.

(iii) Nontoxic shot will be required for all off-reservation hunting by tribal members of waterfowl, coots, moorhens, and gallinules.

(iv) Tribal members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

(v) *Wisconsin Zone.* Tribal members will comply with NR 10.09 (1)(a) (2) and (3), Wis. Adm. Code (shotshells), sec. NR 10.12 (1)(C), Wis. Adm. Code (shooting from structures), sec. NR 10.12 (1)(g), Wis. Adm. Code (decoys), and sec. 29.27 Wis. Stats. (duck blinds). The Canada goose season at Powell Marsh



will begin on September 19. A tribal quota of 25 Canada geese will be in effect until September 25, or until daily censuses by Great Lakes Indian Fish and Wildlife Commission or Wisconsin Department of Natural Resources employees indicate that at least 300 Canada geese are in the area, whichever comes first. If the tribal quota is reached before September 25 or before 300 Canada geese are present, Powell Marsh will be closed to tribal hunting until September 25. Thereafter, the tribal season will resume without a quota and with a daily bag limit of 3 Canada geese.

(vi) *Minnesota Zone.* Tribal members will comply with M.S. 100.29, Subd. 18 (duck blinds and decoys).

(vii) Possession limits are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State

conservation warden as having been taken on-reservation. In Wisconsin, such tagging will comply with sec. NR 19.12, Wis. Adm. Code. All migratory birds which fall on reservation lands will not count as part of any off-reservation bag or possession limit.

(h) *Flathead Indian Reservation, Pablo, Montana* (Nontribal Members Only).

(1) *Ducks (including Mergansers):* Same species, season dates, season length, and daily bag and possession limits as permitted Pacific Flyway portion of Montana under final Federal frameworks to be announced.

(2) *Geese:* Same species, season dates, season length, and daily bag and possession limits as permitted Pacific Flyway portion of Montana under final Federal frameworks to be announced.

*Special Exception for Geese:* A special early closure for all goose hunting will begin at sunset, November 30, 1988, within the following area: Those portions of Flathead, Lake, and Sanders counties beginning at Ravalli, thence north along U.S. Highway 93 to

Polson and Elmo, thence West and South on State Highway 28 to the junction of State Highway 382 near Hot Springs, and South along said highway to Perma, thence east along State Highway 200 to Ravalli, the point of origin.

(3) *General Conditions:* Nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (duck stamp), signed in ink across the face. Special regulations established by the Confederated Salish and Kootenai tribes also may apply on the reservation.

Date: August 15, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-18769 Filed 8-17-88; 8:45 am]

BILLING CODE 4310-55-M



# Test Report Federal Project

Thursday  
August 18, 1988

---

## Part IX

### Department of Energy

---

Bonneville Power Administration

---

Proposed Model Conservation Standards  
Surcharge Policy Extension; Notice and  
Request for Comments



## DEPARTMENT OF ENERGY

## Bonneville Power Administration

## Proposed Model Conservation Standards Surcharge Policy Extension

**AGENCY:** Bonneville Power Administration (Bonneville or BPA), DOE.

**ACTION:** Notice of Proposed Model Conservation Standards (MCS) Surcharge Policy Extension and Request for Comment.

**SUMMARY:** Bonneville is releasing the proposed MCS Surcharge Policy Extension. The policy is designed to implement the recommendations made by the Northwest Power Planning Council (Council). The Council's recommendations are contained in their document titled "Model Conservation Standards for New Residential and Commercial Construction," issued on January 30, 1987, and published in the *Federal Register* on March 26, 1987. In accordance with the Pacific Northwest Power Act, the Council developed MCS and recommended to the Bonneville Administrator that a surcharge be imposed on those portions of a customer's loads within the region that are not covered by a Bonneville MCS Program or other conservation measures which achieve savings comparable to those programs. The Administrator's policy to implement those recommendations was issued in August 1987. That Policy described how the Policy would be applied, how utility plans would be evaluated, the calculation and collection of a surcharge, and seven ways that a utility can avoid a surcharge. Also contained in the Policy were summaries of the Policy's purposes, its statutory direction, and past and present surcharge activities.

This proposed extension of the current Policy would continue the current efforts to encourage regionwide movement towards MCS savings and help encourage the adoption of building codes at MCS levels across the region. To provide some stability in those efforts, Bonneville is proposing to extend the current Policy rather than undertake at this time a major revision of the current Policy. The proposed extension contains the same goals, requirements, and evaluation standards of the current Policy. Finally, those sections of the Policy which contain the words "No Changes" are wholly consistent with the corresponding section of the current Policy. Otherwise, changes are contained within brackets.

Bonneville is seeking comments only on those portions of the existing policy which have been changed. Other issues related to the surcharge policy will not be considered at this time.

**ADDRESSES:** Written comments should be submitted to the Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212, by September 16, 1988.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jo Ann C. Scott, Public Involvement Manager, Public Involvement office, at the address listed above, 503-230-3478. Oregon callers outside of Portland may use 800-452-8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800-547-6048. Information may also be obtained from:

Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 243, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503-230-4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503-687-6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-456-2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59807, 406-329-3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98807, 509-662-4377, extension 379.

Mr. Terence G. Esvelt, Puget Sound Area Manager, 201 Queen Anne Ave., Suite 400, Seattle, Washington 98109-1030, 206-442-4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509-522-6225.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208-523-2706.

Mr. Thomas H. Blankenship, Boise District Manager, Room 494, 550 West Fort Street, Boise, Idaho 83724, 208-334-9137.

**SUPPLEMENTARY INFORMATION:****Table of Contents**

- I. Background of Policy
  - A. Introduction
  - B. Statutory Direction
- II. Past and Present Surcharge Policy Development Efforts
  - A. Council Activities to Date
  - B. Bonneville Activities to Date
  - C. Council's 1987 Surcharge Recommendation
- III. Surcharge Policy
  - Section 1: Definitions

Section 2: Application of the Surcharge Policy

Section 3: Evaluation of Alternative Utility Plans

Section 4: Calculating a Surcharge

Section 5: Collecting a Surcharge

Appendix 1: Achieving Electrical Savings by Adopting the Bonneville/Utility MCS Support Program

Appendix 2: Achieving Electrical Savings by Adopting an Alternative Utility Program

Appendix 3: Achieving Electrical Savings by Participating in the Early Adopter/Northwest Energy Code Program

Appendix 4: Achieving Electrical Savings by Adopting a Codified Version of the MCS

Appendix 5: Achieving Electrical Savings by Adopting Alternative or Equivalent Building Codes

Appendix 6: Achieving Electrical Savings by Adopting a Codified Version of the MCS as a Utility Service Standard

Appendix 7: Achieving Electrical Savings by Adopting an Alternative or Equivalent Utility Service Standard

Appendix 8: Submittal and Compliance Schedule for MCS surcharge.

**Note.**—If a section heading includes the words "NO CHANGES," the content of that section is the same as the current surcharge Policy. Otherwise, changes are contained within brackets.

**I. Background of Policy****A. Introduction**

The Surcharge Policy responds to recommendations made by the Northwest Power Planning Council (Council) in its 1986 Northwest Conservation and Electric Power Plan (Plan) and its Model Conservation Standards (MCS) for New Residential and Commercial Construction (Plan Amendment). The purpose of this policy is to encourage utilities to achieve additional electrical savings through improved residential and commercial building construction which can ultimately result in regionwide adoption of the Council's MCS in codes. There are two additional policy objectives:

1. To identify what criteria will be used to evaluate a utility's proposed approach to achieving MCS level electrical savings; and
2. To identify how a surcharge would be calculated and collected.

As the Council states in its Plan Amendment, "By the end of 1989, the Council expects the region to achieve residential sector savings equivalent to at least 85 percent of those that would be achieved with full implementation of the MCS." One long-run goal is to achieve MCS level savings through code adoption.

The proposed extension of the current Surcharge Policy contains some changes in the submission and implementation dates, program name changes, and



language clarification based on our experience in implementing the Policy in 1987-1988. Bonneville proposes that the goals, plan evaluation standards, reporting requirements, and remedies of the current version of the Policy be retained.

[The policy is in effect from the date it is signed by the Administrator until it is either amended or rescinded.]

#### *B. Statutory Direction*

Section 4(e)(3) of the Pacific Northwest Electric Power Planning and Conservation Act (Act) provides for developing MCS as part of the Council's Plan. The standards, as described in section 4(f)(1) of the Act, are to include standards applicable to new and existing structures and to utility and government conservation programs. Such standards should reflect geographic and climatic differences and produce all power savings that are cost effective for the region and economically feasible for consumers.

Section 4(f)(2) of the Act provides that the Council may recommend to the Bonneville Administrator the imposition of a surcharge on customers of the Administrator for those portions of their loads within the region that are within States or political subdivisions which have not, or on the Administrator's customers which have not, implemented the standards or other conservation measures that the Administrator determines achieve energy savings comparable to the standards. Finally, section 4(e)(3)(G) of the Act mandates that the Council develop a methodology for calculating the surcharge.

#### *II. Past and Present Surcharge Policy Development Efforts*

Part A of this section summarizes past MCS and surcharge actions undertaken by the Council. Part B summarizes Bonneville's past surcharge-related activities. Part C describes the Council's 1987 surcharge recommendation as contained in its Plan Amendment of January 30, 1987.

##### *A. Council Activities to Date—No Changes*

On April 27, 1983, the Council adopted its first Plan. As required by the Act, the Council's 1983 Plan contained MCS for newly constructed residential and commercial buildings and for converting existing residential and commercial buildings to electric space heating and conditioning.

In its 1983 Two-Year Action Plan (chapter 10 of the 1983 Plan), the Council identified tasks to be undertaken by Bonneville, the Council, and other regional entities. That Plan mandated

that Bonneville include in its surcharge policy a consistent procedure for certifying compliance with MCS and a procedure for reviewing and evaluating alternative plans.

In accordance with the 1983 Plan, State governments, local governments, or utilities were to adopt and enforce the MCS as building codes or utility service standards by January 1, 1986. Where such standards were not adopted, an alternative plan to achieve comparable savings should have been in place by January 1, 1986. Where neither action had occurred, the Council recommended that the Administrator impose a surcharge.

The Council voted on October 31, 1984, to adopt an amendment which greatly simplified the surcharge calculation. The Council recommended that a 10 percent surcharge be levied on the customer's power bill for that portion of its loads which were not complying with the standard.

On July 26, 1985, the Council proposed to enter rulemaking to amend the MCS. On December 4, 1985, the Council voted to amend that portion of the 1983 Plan dealing with MCS. The amended MCS thermal performance levels for both new residential and new commercial buildings were equivalent to the MCS set forth and amended by the Council in its 1983 Plan. The Council also recommended that Bonneville develop a surcharge policy based on MCS implementation and performance.

In its 1986 Action Plan, the Council identified specific actions that Bonneville should take towards regionwide implementation of the MCS. Bonneville was to: (1) Have utilities submit to Bonneville a plan declaring how they intended to comply with the MCS; (2) design a process to collect utility-specific data on the savings that would be achieved if all buildings were constructed to MCS levels; (3) continue developing and implementing a procedure to measure compliance with the MCS; (4) review alternative plans for achieving compliance with the MCS; and (5) develop a new surcharge policy.

On November 20, 1986, the Council proposed to enter further rulemaking to amend part of its 1986 Plan dealing with MCS and the surcharge. After public comment, the Plan Amendment was published on January 30, 1987. Notice of the Plan Amendment, which included the Council's 1987 MCS, was published in the *Federal Register* on March 26, 1987 (52 FR 9738, March 26, 1987).

##### *B. Bonneville Activities to Date*

Bonneville began developing a surcharge policy in early 1984 through a series of informal meetings with State

government, local government, utility, and Council representatives. Bonneville staff informally discussed the various issues that might surround the development of a policy to implement the Council recommendation to impose a surcharge. These informal discussions formed the basis of a *Federal Register* Notice of Intent to Develop a Policy to Implement the Council Recommended Conservation Surcharge. The notice (49 FR 3489, September 4, 1984) was mailed to the public on August 28, 1984.

Bonneville elected to delay publishing a proposed policy until after final Council action amending the surcharge methodology. Public review and comment on the proposed policy took place between March 13, 1985, and May 17, 1985.

Bonneville suspended action on the surcharge policy when the Council entered rulemaking to amend the MCS in the summer of 1985. After the Council amended its MCS recommendation in December 1985, Bonneville developed a revised proposed policy and received public comment on that proposal during July and August 1986. As part of the Administrator's decision about whether or not to finalize the revised proposed surcharge policy, Bonneville undertook an analysis of the cost effectiveness and consumer economic feasibility of the MCS contained in the Council's 1986 Plan. Bonneville concluded that some of the recommended measures were not cost effective, and on December 19, 1986, Bonneville's MCS findings were published.

Based in part on that analysis, the Council entered rulemaking to amend its MCS and surcharge recommendations. In turn, Bonneville suspended the development of a final surcharge policy. Following publication of the Council's Plan Amendment on January 30, 1987, Bonneville undertook a second revision of the proposed surcharge policy.

On May 26, 1987, Bonneville released its proposed surcharge policy for public comment. The comment period closed on July 15, 1987. During the comment period there was one public meeting which was held on June 22, 1987. A number of changes were made in the proposed version of that policy, based on the public comment received. The final policy, issued on August 25, 1987, entitled "Model Conservation Standards Surcharge Policy," was Bonneville's response to Council recommendations to develop a surcharge policy.

[In response to the 1987 Policy, utilities submitted plans for the residential and commercial sectors within their service areas. Those plans covered calendar year 1988. Since the



Policy expires on December 31, 1988, Bonneville is now extending the Policy. This version of the Policy is substantially the same as the current version of the Policy. One difference is that this version does not contain an expiration date. Also, specific submittal dates have now been moved to Appendix 8.]

#### C. Council's 1987 Surcharge Recommendation—No Changes

The Council's Plan Amendment of January 30, 1987, made several major changes to its 1986 Plan. The most significant change in the surcharge recommendation was a move away from a performance-based surcharge, where utilities could face a surcharge if their performance was poor relative to the performance of other utilities. A summary of the Council's 1987 surcharge recommendation appears below.

##### 1. Residential Surcharge Recommendation

The Council recommended that a 10 percent surcharge be imposed on utilities which do not submit, by a deadline set by Bonneville: (a) An initial plan for implementing the Bonneville/Utility Residential MCS Program; (b) a plan for implementing an alternative program which is approved by Bonneville as being equivalent; or (c) a declaration, approved by Bonneville, that the MCS for residential buildings will be met by building codes. This surcharge would continue in effect until a utility has filed an initial plan and has obtained the necessary Bonneville approvals.

##### 2. Commercial Surcharge Recommendation

The Council recommended that a 10 percent surcharge be imposed on utilities which do not submit, by a date set by Bonneville: (1) An initial plan for implementing the Bonneville/Utility Commercial MCS Program; (2) a plan for implementing an alternative program which is approved by Bonneville as equivalent; or (3) a declaration, approved by Bonneville, that the MCS for commercial buildings will be met by building codes at the MCS levels. The Council recommended that the surcharge continue in effect until a utility has filed an initial plan and has obtained the necessary Bonneville approvals.

##### 3. Conversion Surcharge Recommendation

The Council's MCS for residential and commercial buildings converting to electric space heating/conditioning stated that State or local governments or

utilities should take actions through codes and/or alternative programs to achieve electric power savings from buildings which convert to electric space heating/conditioning. The savings should be comparable to those savings that would be achieved if each building converting to electric space heating/conditioning were upgraded to include all cost-effective electricity conservation measures. The Council highly recommended this conversion standard, but did not recommend that a surcharge be imposed for failure to adopt the standard.

##### 4. Combined Commercial/Residential Code

One provision of the Plan Amendment allowed for a combined residential/commercial MCS strategy by a utility. This approach allowed for less than MCS program savings to be achieved in one sector as long as the shortfall is recouped in the other sector.

This alternative was to be applicable only to the submission of alternative codes or utility service standards

##### 5. Exemptions

The Council has determined that no exemptions are needed at this time.

##### 6. Federal Loads and Generic MCS

The Council did not make any surcharge recommendation in these areas

#### III. Surcharge Policy

##### Section 1: Definitions

##### A. Administrator—No Change

Administrator of the Bonneville Power Administration or his designated representative

##### B. Alternative Code—No Change

Codes implemented in the residential and commercial sectors which, in aggregate, achieve total electrical savings at least as large as would have been expected had the Council's illustrative MCS been implemented in the residential and commercial sectors. The Council's illustrative MCS are contained in the Council's plan Amendment of January 30, 1987, as published in the *Federal Register* on March 26, 1987

##### C. Alternative Utility Plan—No Change

Any plan which either partially or wholly relies on an approach to conservation savings discussed in appendix 2, 4, 5, 6, or 7 of this policy

##### D. Alternative Utility Program—No Change

For the residential sector, a utility operated MCS support program designed to achieve at least the same level of total expected electrical savings, while complying with the IAQ and ventilation goals, of Bonneville's Super GOOD CENTS program. For the commercial sector, a utility MCS support program designed to promote at least the same MCS measures as contained in the Council's commercial MCS of March 26, 1987, and providing comparable design assistance services as contained in the Bonneville/Utility MCS support program as of the effective date of this policy

##### E. Customer—No Change

For purposes of this policy, a utility existing in the Pacific Northwest region which purchases firm power from Bonneville under a utility Metered or Computed Requirements Contract, or a utility which purchases firm capacity under a pre-Act contract, or a utility which participates in the Residential Purchase and Sales Agreement/Exchange Transmission Credit Agreement, as a active exchanger or deemer

##### F. Equivalent Code—No Change

In the residential sector, a code for a specific sector which can be expected to achieve at least the same level of total electrical savings within the jurisdiction as would have been achieved if the utility serving that jurisdiction implemented the Council's residential MCS. For the commercial sector, the Council's MCS of March 26, 1987, will be used

##### G. Jurisdiction—No Change

For purposes of this policy, any unit of government including Indian Tribes, State and local governments, and municipal corporations

##### H. Region—No Change

The Pacific Northwest Region, region, or regional means the area consisting of Oregon, Washington, and Idaho, the portion of the State of Montana west of the Continental Divide, and such portions of the States of Nevada, Utah, and Wyoming as are within the Columbia River drainage basin; and any contiguous areas, not in excess of 75 air miles from the area referred to above, which are part of the service area of a rural electric cooperative customer, served by the Administrator on the effective date of the Act, which has a distribution system from which it serves both within and without such region



**I. Service Area—No Change**

The service area of a utility is that portion of its service territory which is both subject to the Surcharge Policy and to which the utility provides electric power service to the residential or commercial sectors.

**J. Total Retail Load—Was Total System Load**

The number of firm kilowatt hours (kWhs) sold at retail by a customer during the 12 month period prior to the effective date of this policy

**K. Total Residential Load—New**

The number of firm kWhs sold at retail by the customer to the residential sector during the 12-month period prior to the effective date of this policy

**L. Total Commercial Load—New**

The total number of firm kWhs sold at retail by the customer to the commercial sector during the 12-month period prior to the effective date of this policy.

**Section 2: Application of the Surcharge Policy**

For the residential sector, by the plan submittal date specified in Appendix 8, customers must submit either: [(a) A letter indicating that the approach being used to comply with the Policy will continue to be used to comply with the Policy for the time frame for the submission, (b) a plan to implement the Super GOOD CENTS Program, or (c) an alternative utility program, or utility service standard for Bonneville approval, or (d) a plan certifying that jurisdictions within its service area will implement and enforce the MCS via participation in the Early Adopter Program/Northwest Energy Code Program (EAP/NECP) or adoption of a Bonneville-approved building code. A utility's residential sector plan may contain any combination of these approaches. [Except as provided for in Section 3(A) of this Policy, the utility's entire service area must be covered by some combination of the conservation strategies described in the appendices to this policy.]

[A utility's residential sector plan will be evaluated on the basis of the utility's proposed efforts for the residential sector during the succeeding calendar year and its success with the approach(s) used to comply with the Policy during the previous calendar year.]

Customers who do not implement a Bonneville approved residential MCS plan by the January 1 following their submittal will be subject to a surcharge as calculated in Section 4 of this policy. Customers who have been granted a

grace period, as provided for either in section 3 or the appendix relevant to the utility's conservation strategy, will not face a surcharge until the end of any such period.

For the commercial sector, by the plan implementation date specified in Appendix 8, customers must submit either: [(a) A letter indicating that the approach being used to comply with the Policy will continue to be used to comply with the policy for the timeframe for the submission, (b) a plan to implement Bonneville's Commercial MCS Program, (c) an alternative utility commercial program or utility service standard in the commercial sector, or (d) a plan certifying that jurisdictions within its service area have met the Council's commercial MCS through codes. A utility's commercial sector plan may contain any combination of these approaches. [Except as provided for in Section 3(A), the utility's entire service area must be covered by some combination of the conservation strategies described in the appendices to this policy.]

Customers who have not implemented a Bonneville-approved commercial MCS plan by [the implementation date specified in Appendix 8], are subject to a surcharge, as calculated in Section 4 of this policy. Customers who have been granted a grace period, as provided for in either section 3 or the appendix relevant to the utility's conservation strategy, will not face a surcharge until the end of any such period.

Customers of Bonneville without service areas as defined in this policy, need only submit evidence of their lack of such a service area by the [plan submission date specified in Appendix 8]. This provision exists for those customers who have voluntarily adopted a policy not to serve the residential or commercial sectors, or who are prohibited from serving the residential or commercial sector. If the customer serves one of these two sectors, then this provision will only apply to the one sector not served.

Customers who have neither submitted this information, nor a plan for achieving conservation in these sectors, will be subject to a surcharge on the January 1 following the submittal date.

Each of the appendices to this policy represents a different approach to achieve electrical savings from improved construction practices. These appendices contain more specific submission and evaluation criteria for each of the MCS plan options and are part of this policy.

Once any plan is approved and implemented, Bonneville will assume

that the utility and/or jurisdiction(s) within its service areas will carry out that plan in good faith. During the period for which this policy is in effect, Bonneville reserves the right to revisit any utility's approved plan if Bonneville has reason to believe that the utility has not implemented its plan in good faith. This same provision applies to utilities who rely on jurisdictions to take actions to comply with this policy.

**Section 3: Evaluation of Alternative Utility Plans**

An alternative utility plan is any plan which relies wholly or in part on an approach to conservation savings presented in Appendix 2, 4, 5, 6, or 7 of this policy. These plans will be evaluated using three criteria: (1) Expected electrical savings, (2) enforcement, and (3) indoor air quality (IAQ) and ventilation. This section applies to all residential sector alternative plans and those commercial sector alternative plans relying on the adoption of commercial codes or commercial service standards.

If Bonneville concludes that the utility's proposed alternative plan cannot be accepted because of its failure to comply with any of the evaluation criteria described below, Bonneville will allow an additional grace period at least as long as Bonneville took to evaluate the utility's initial proposal. Subsequent grace period(s) may be allowed on a case-by-case basis. [Text deleted]

**A. Equivalent Electrical Savings**

For the residential sector, if a utility is proposing to achieve electrical savings by implementing an alternative residential utility program, Bonneville will use the prospective total electrical savings of its Super GOOD CENTS Program to determine whether the utility's proposed approach will at least meet the appropriate residential electrical savings level for the period of time covered by a utility's plan. Part of the equivalence determination procedure for an alternative residential utility program will involve a comparison between the utility's proposed marketing program and the marketing program they would have pursued had they enrolled in the Super GOOD CENTS program for the period of time [covered by utility's plan.]

Utilities which rely on jurisdictional adoption of residential building codes, or which impose a residential service standard, to achieve additional energy savings in the residential sector will have to provide evidence supporting the claim that the code (or service standard)



can be expected to achieve at least the same level of electrical savings within the jurisdiction (or utility service area, depending on whether a code or service standard approach is used) as would have been achieved if the utility had participated in Bonneville's Super GOOD CENTS Program.

Utilities which rely on jurisdictional adoption of residential and commercial codes (or which impose residential and commercial service standards) to achieve additional savings beyond current practice, may "trade-off" savings achieved in one sector towards a deficit in the other sector. The utility would have to present evidence supporting its claim that the residential and commercial codes, in aggregate, can be expected to achieve at least the same total level of electrical savings as would have been achieved had the jurisdiction adopted the Council's full illustrative commercial and residential MCS for that climate zone. Such sectoral trade-offs are only allowed using enhanced building codes or service standards.

In addition, a utility may obtain equivalent savings by allocating savings achieved by advanced building codes in a jurisdiction (or jurisdictions) within its service area to its entire service area. Such "jurisdictional trade-offs" are only allowed where the utility shows that the full Council MCS level of savings for both sectors are being attained, in aggregate, within the utility's service area.

Finally, those utilities relying on commercial code adoption by a jurisdiction within or covering their service area, or who will impose a commercial service standard, will have to provide evidence supporting their claim that the expected total electrical savings are at least equivalent to what would have been expected had the jurisdiction implemented the Council's illustrative commercial MCS. The only exception to these requirements is for utilities or jurisdictions who adopt a codified version of the Council's MCS. [Text Deleted]

[Submittals in future years may be evaluated using different standards in the event that code advancement occurs and/or the MCS are changed.] For 1989, Bonneville will analyze residential electrical savings from an alternative plan by assuming that, in the absence of MCS, a residence would have been built to one of the following: (a) in Oregon, 1983 energy code; (b) in Washington, 1986 energy code; or (c) in either Idaho or Montana, HUD Minimum Property Standards. Electrical savings in the commercial sector will be evaluated assuming: (a) 1986 code in Oregon and Washington, (b) 1983 National Energy

Code in Montana, and (c) individual jurisdiction codes in Idaho.

All thermal performance evaluations will rely on good engineering practices. Bonneville will be guided by the assumptions, process, and housing prototypes contained in Bonneville's Code Equivalency Determination Procedures.

#### B. Enforcement

A utility will have more discretion in proposing an approach which will meet the second evaluation criterion—enforcement. Bonneville is recommending that any customer contemplating submission of an alternative utility plan refer to Bonneville's Super GOOD CENTS, Early Adopter/Northwest Energy Code, and Commercial MCS Program descriptions for guidance. Alternative utility plans, excluding an alternative utility commercial program, must contain a requirement for site inspection consistent with the effective date of the surcharge.

Referring to alternative utility programs, a utility will have to provide evidence adequate to assure Bonneville that the energy savings which are being claimed are attributable to the utility's program. Part of that evidence is some enforcement method to assure that the conservation savings the utility is claiming are attributable to the measures they are promoting and inspecting.

#### C. Indoor Air Quality and Ventilation

[For the residential sector, an alternative utility plan must contain information on how the utility and/or jurisdiction plans to achieve indoor air quality (IAQ) and ventilation rates at least comparable to those achieved in Super GOOD CENTS homes.] The approaches include informing the public about potential health risks from indoor pollutants, testing for selected pollutants, and [installing mitigation measures if certain pollutants are detected to be present in unreasonable levels, and maintaining appropriate levels of ventilation. For residential construction all alternative plans will be examined to determine if the construction practices being promoted or required, when combined with the comparable monitoring, information, and mitigation strategies are likely to assure that IAQ and ventilation rates are comparable to what is achieved in homes constructed to Super GOOD CENTS standards.]

[For the commercial sector, the indoor air quality requirements contained in the Council's Plan Amendment of March 1987 will be required. These same

standards are contained in Bonneville's Energy Smart Design Program and the codified versions of the Council's commercial MCS.]

#### Section 4: Calculating a Surcharge

Only change: Substitute retail for system in surcharge calculation. Consistent with rates language \* \* \*

A. Not less than 30 days prior to a final decision on the imposition of a residential surcharge, the Administrator shall provide written notice to the customer including determination of the amount of a customer's load not covered by a Bonneville approved MCS residential plan. The amount of the load not covered by a Bonneville-approved MCS residential plan shall be based on information submitted by the utility in accordance with the reporting requirements listed in the appendices to this policy. In the event that a utility has not provided that information, the Administrator may rely on the best information available to Bonneville.

B. The level of the residential surcharge will be determined by dividing the customer's residential load not covered by a Bonneville-approved MCS residential plan by the customer's total [retail] load, rounding the result to the nearest one-tenth of a percent. This resulting percentage is multiplied by 0.10.

C. Not less than 30 days prior to a final decision on the imposition of a commercial surcharge, the Administrator shall provide written notice to the customer including a determination of the amount of the load not covered by a Bonneville-approved MCS commercial plan. The amount of the load not covered by a Bonneville-approved MCS commercial plan shall be based on information submitted by the utility in accordance with the reporting requirements listed in the appendices to this policy. In the event that a utility has not provided that information, the Administrator may rely on the best information available to Bonneville.

D. The level of the commercial surcharge will be determined by dividing the customer's commercial load not covered by a Bonneville-approved MCS commercial plan by the customer's total [retail] load, rounding the result to the nearest one-tenth of a percent. This resulting percentage is multiplied by 0.10.

E. The resulting level of the residential or commercial surcharges will be applied to all power purchases and/or exchanges made by the customer under the applicable rate schedules, using the Council's surcharge methodology, and



will be applied subsequent to any other rate adjustments.

F. At no time will a customer simultaneously be assessed a surcharge for failure to comply with the requirements in the residential sector and a surcharge for failure to comply with the requirements in the commercial sector.

G. The customer and other interested parties shall be afforded an opportunity to provide comments regarding the determinations made in sections 4(A) to 4(D). Such comments may be made in writing or orally at a public meeting convened by Bonneville at the request of the customer for this purpose. This public meeting will be held between the time of the written Notice of Intent to surcharge and the final surcharge decision. Included in the Intent to Surcharge will be an initial determination of the fraction of a customer's load subject to the surcharge, based on sections 5(A) to 4(D). Following the receipt and evaluation of comments, the Administrator shall provide written notice to the customer of the final surcharge decision.

H. Beginning with the effective date of a surcharge, the Administrator shall review the findings made in sections 4(A) to 4(D) after the customer, or a jurisdiction served by the customer, has taken an action that affects those findings. Customers may request such review by providing evidence in accordance with this section that the customer or a jurisdiction served by that customer has taken actions subsequent to the effective date of the surcharge.

#### *Section 5: Collecting a Surcharge—No Changes*

A. Those customers receiving a final written notice of a load subject to a surcharge shall be billed for the surcharge beginning with the first full billing period following issuance of such notice.

B. Any power purchases or exchanges made on or after the effective date of the surcharge, but before receipt of final notice finding the load subject to a surcharge, may be retroactively billed to the effective date of the surcharge. Such retroactive billing shall collect the retroactive surcharge over a like number of billing periods as elapsed from the effective date of the surcharge to the receipt of final written notice of a surcharge.

C. The level of surcharge is applied to all power purchases and/or exchanges made by the customer under the applicable rate schedules and/or exchanges pursuant to the residential Purchase and Sales Agreement/Exchange Transmission Credit

Agreement, using the Council's surcharge methodology, and is applied subsequent to any other rate adjustment.

1. For firm requirements customers purchasing firm power under the rate schedules subject to the surcharge, the surcharge shall be applied monthly to the billing charges for all power purchased under these rate schedules during the billing period.

2. For customers participating in the residential exchange program, the surcharge shall be applied to the charges for determining the cost to the purchaser of buying firm power from Bonneville under the terms and conditions of the Residential Purchase and Sale Agreement.

3. For those firm requirements customers that both purchase power from Bonneville and participate in the Residential Purchase and Sales Agreement or Exchange Transmission Credit Agreement, the surcharge shall be applied in the following manner to avoid surcharging the same load twice:

a. All power purchases under a utility's Power Sales Contract at rates subject to the surcharge shall include a surcharge, as calculated in the previous section, added to the billing charges for billing period; and,

b. The surcharge applied to the utility's totals exchange load shall be adjusted by multiplying the surcharge level by the percentage of a utility's exchange load served by a utility's own resources. The percentage of exchange load served by a utility's own resources shall be based on the difference between the utility's total retail load and firm power purchases from Bonneville divided by the total retail load and rounded to the nearest one-tenth of a percent. The adjustment surcharge level shall be applied to the charges for determining the cost to the purchaser of buying firm power from Bonneville under the terms and conditions of the Residential Purchase and Sales Agreement or in conformance with Exhibit E of the Exchange Transmission Credit Agreement.

D. If a customer participating in the Residential Exchange is currently in a deemer status, the surcharge shall be accumulated in the account established for this purpose as specified in the respective agreement and shall be included in the obligation a utility must repay prior to receiving a direct payment from Bonneville. If a customer is not in a deemer status, the surcharge shall be included in the determination of the net payment made by Bonneville.

E. The collection of the surcharge shall continue until the Administrator determines that the surcharge is no

longer required under the terms of this policy.

F. Surcharges collected on purchases for periods in which loads are subsequently found to be in compliance with this policy shall be credited to the customer in the first full billing period following final written notice of such finding. Surcharges on loads which are subsequently found not to have been in compliance with the terms of this policy for specified periods shall be billed to the customer in the first full billing period following final written notice of such findings.

#### *Appendix 1: Achieving Electrical Savings By Adopting the Bonneville/Utility MCS Support Program*

##### *A. Residential Sector*

Bonneville customers opting for this path are assured that enrollment in and subsequent implementation of the Super GOOD CENTS Program throughout their service areas will result in avoidance of a residential surcharge under the current surcharge policy. A customer which is considered a Super GOOD CENTS Program participant, but is only operating that program in a portion of its service area subject to the Policy, will have to take actions to assure that those portions of its service territory not covered by Super GOOD CENTS are covered by some combination of the other conservation strategies presented in these appendices. Those customers which implement the MCS measures contained in the Super GOOD CENTS Program, but do not implement the required incentives and/or implement a different advertising strategy will be treated as filing an Alternative Utility Plan. Those utilities should refer to Appendix 2 for a discussion of that option.

For customers which on average over the last 3 years have had no more than (a) five site-built housing starts, and (b) 2,000 residential accounts will be considered small utilities for purposes of this policy. These utilities will have the option of enrolling in Bonneville's Super GOOD CENTS Program for small utilities, referred to as the Small Utility Program. If a utility believes it qualifies for this option, the utility is encouraged to contact the nearest Bonneville Area or District Office to obtain more information on this program option.

[If a customer is currently relying on Super GOOD CENTS participation to comply with the Policy for the current calendar year, the utility's submittal for the following year can consist of a letter indicating that the utility plans to continue participation in Super GOOD



CENTS for calendar year 1989. Any customer who is either considered a Super GOOD CENTS Program participant for the purposes of this policy, or is proposing to become a program participant, shall provide Bonneville with the following information: (1) total residential load, (2) the portion of the customer's residential load covered by this conservation strategy, and (3) total retail load.]

Otherwise, those customers wishing to enroll in Super GOOD CENTS as a way of avoiding a surcharge must indicate this to Bonneville by [the plan submittal date specified in Appendix 8]. In addition, the utility shall have signed a GOOD CENTS grant agreement by [the implementation date specified in Appendix 8]. Bonneville will consider Super GOOD CENTS Program implementation to have occurred when the utility is engaging in activities, particularly marketing and promotion activities, which can be considered consistent with the utility's agreement. [Text Deleted]

Bonneville will consider offering a grace period if Bonneville has not completed the customer's Super GOOD CENTS grant award by [the implementation date specified in Appendix 8].

Any such grace period will be provided in the event that Bonneville has received a plan by [the submittal date specified in Appendix 8], and the approval delay is due solely to Bonneville internal delay.

#### B. Commercial Sector

Bonneville customers opting for this path are assured that enrollment in, and subsequent implementation of, Bonneville's Smart Design Program throughout the utility's service area will result in avoiding a commercial surcharge under the current Surcharge Policy. All customers wishing to avoid a surcharge under this path must agree to comply with the IAQ and data reporting requirements and other technical specifications of that program.

[If a customer is currently relying on Smart Design participation to comply with the Policy for the current calendar year, the utility's submittal for following calendar year can consist of a letter indicating that the utility plans to continue participation in Smart Design for the following calendar year.] Any customer who is either considered a program participant, or is proposing to become a program participant, shall provide Bonneville with the following information: (1) Total commercial load, (2) the portion of the customer's commercial load covered by this

conservation strategy, and (3) total [retail] load.

Those new customers going to participate in Smart Design to comply with the policy must agree by [the plan submission date shown in Appendix 8], to enroll in the commercial program and must have enrolled in the program no later than [the plan implementation date shown in Appendix 8]. Bonneville will consider offering a grace period if Bonneville has not completed the customer's grant award by [the plan implementation date]. Any such grace period will be provided in the event that Bonneville had received a plan by [the plan implementation date shown in Appendix 8], and the approval delay is due solely to Bonneville internal delay.

Customers who are either new or continuing Smart Design program participants shall provide Bonneville with the following information: (1) Total commercial load, (2) the portion of the customer's commercial load covered by this conservation strategy, and (3) total [retail] load.

#### *Appendix 2: Achieving Electrical Savings by Adopting an Alternative Utility Program*

[If a utility is currently relying on an approved alternative plan to comply with the Policy for the current calendar year, for either or both the residential and commercial sectors, the utility can submit a letter indicating its intentions to continue to rely on that approach for the following calendar year. The date requested in Section A(4) and B(5) shall be submitted at that time.]

#### A. Residential

An Alternative Utility Residential Program is the customer's proposed approach to meeting the standards of Bonneville's Super GOOD CENTS Program. In order for Bonneville to verify that the proposed program will provide equivalent savings, the information listed below must be submitted.

1. The conservation measures that will be promoted.

2. Analysis of the thermal performance of the conservation measures using Bonneville's input assumptions and Bonneville prototypes. These results will be compared to the Super GOOD CENTS illustrative path for that climate zone, using a WATTSUN analysis. If alternative assumptions or prototypes are used, the analysis should include documentation supporting their use. Acceptance of these alternative assumptions or prototypes, is at the discretion of Bonneville. [Text Deleted]

3. A list of activities to be undertaken to achieve the targeted penetration, such as: Promotion and sales, advertising, incentives (type and level), technical assistance, certification, and any other applicable information. In addition, customers will be required to submit quarterly reports listing the activities undertaken and resources utilized in the marketing effort.

4. A plan showing how the utility will collect and provide the following data to Bonneville by January 30 of the following year:

a. Total number of new homes (all fuels) constructed in the utility's service area during the past calendar year [single-family broken out by site-built, modular, and HUD-code homes, total multi-family].

b. Total number of new electrically-heated homes constructed in the utility's service area during the past calendar year [single-family broken out by site-built, modular, and HUD-code homes, total multi-family].

c. Total number of new electrically-heated homes constructed in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan [single-family broken out by site-built, modular, and HUD-code homes, total multi-family].

5. Information on how the utility and/or jurisdiction plans to achieve indoor air quality (IAQ) and ventilation rates at least comparable to those achieved in Super GOOD CENTS homes.

6. The customer shall provide Bonneville with the following information: (a) Total residential load, (b) the portion of the customer's residential load covered by this conservation strategy, and (c) total [retail] load.

The Alternative Utility Program path is not generally recommended for utilities without experience in operating such programs. An established track record with a well-defined package of measures will be extremely helpful, if not essential, in obtaining Bonneville approval for Alternative Utility Programs. Nonetheless, Bonneville staff will work with customers interested in pursuing this path to help explain the data submission requirements and other complexities involved in this approach.

Because of these complexities, utilities intending to use this path for policy compliance should submit their proposals to Bonneville at the earliest possible date after the final adoption of the surcharge policy. An approved program shall be implemented by [the plan implementation date contained in Appendix 8], unless a grace period, as



provided for in Section 3 of the policy, had been granted.

#### B. Commercial

An alternative Utility Commercial Program is the customer's proposed approach to meeting the standards of the Bonneville/Utility Commercial MCS Program. A proposed alternative program will be evaluated relative to the: (1) Level and type of activities and services to be offered, (2) method of marketing and performing the services, (3) penetration levels expected for the proposed program activities, and (4) proposed inspection method. The types of design assistance offered in Bonneville's program will be used to evaluate the type of design assistance a utility is proposing to offer in its own commercial MCS design assistance program. The types of design assistance which Bonneville's Commercial MCS Program contains are:

- Promotion of services to commercial customers;
- Screening to determine design assistance needs;
- Depending on the size of the utility and the type of commercial construction, provision of building design handbooks, computer energy modeling, clearinghouse referral, or other building design analysis; and
- Designer recognition for specified levels of energy efficiency.

To perform the necessary review, Bonneville will require the following information:

1. A list of activities and services the customer intends to offer (i.e., modeling, design assistance, design handbook, information services, and training opportunities) to achieve the targeted penetration;
2. Management and oversight consistent with Bonneville practices;
3. A proposed method to submit to Bonneville quarterly reports listing the activities undertaken and resources used in the marketing effort.
4. The customer's total commercial load, (b) the portion of the customer's commercial load covered by this conservation strategy, and (c) total [retail] load.
5. A plan showing how the utility will collect and provide the following data to Bonneville by January 30 of the following year:
  - a. Total number of new commercial buildings (all fuels) constructed in the utility's service area during the past calendar year, listed by Bonneville prototype.
  - b. Total number of new electrically-heated commercial buildings constructed in the utility's service area

during the past calendar year, listed by Bonneville prototype.

c. Total number of new commercial buildings constructed, in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan, listed by Bonneville prototype.

By the third year of the program, Bonneville is projecting that design assistance services will be offered to 5 percent of the new commercial building constructed in the service areas of utilities participating in Bonneville's Commercial MCS Program. Those customers intending to use this path for surcharge policy compliance shall submit their proposed plan by [the plan submission date shown in Appendix 8], and shall have implemented the approved program no later than [the plan implementation date shown in Appendix 8], unless a grace period, provided for in Section 3 of the policy has been granted.

#### *Appendix 3: Achieving Electrical Savings by Participating in the Early Adopter Program Northwest Energy Code Program*

This is a pre-approved path for avoidance of the surcharge if all the jurisdictions within the customer's service area, subject to the surcharge policy, are Early Adopter/Northwest Energy Code Program (EAP/NECP) participants. Except for the one exception noted below, if there are jurisdictions within a customer's service area which are not EAP/NECP participants, then the customer will be subject to a surcharge unless those jurisdictions have implemented a Bonneville-approved building code or the utility has implemented a Bonneville-approved utility program or a Bonneville-approved service standard.

Customers serving areas containing jurisdictions that have adopted advanced building codes may seek to allocate savings achieved by those jurisdictional codes to portions of their service areas not covered by another approved option. This will be permitted only if the utility shows that the full Council MCS level of savings for both sectors are being attained, in aggregate, within that utility's service area. In other words, the utility must achieve at least the same level of total electrical savings as would be achieved had the Council's full commercial and residential MCS been implemented throughout the utility's service areas.

The essential feature of the EAP/NECP is the adoption by a jurisdiction of the MCS contained in the Early Adopter Program description. Additional program features include specific

activities to ensure that no degradation in IAQ results, some form of enforcement method to assure MCS construction, and some data reporting requirements.

[A customer currently relying on jurisdictional participation in the Early Adopter/Northwest Energy Code Program as at least part of its Policy compliance approach for the current calendar year, must submit a letter (the plan submission date shown in Appendix 8), indicating that it wishes to continue to rely on that program participation to comply with the Policy for the timeframe for the submission.]

#### A. Residential

1. Customers with jurisdictions within their service area who are currently participating in the EAP/NECP, the customer must submit a letter indicating (a) the jurisdictions who are EAP/NECP participants, (b) the award number for each jurisdiction, and (c) a copy of the ordinance adopted by each jurisdiction. In addition, customers must indicate what fraction of its residential load lies within Early Adopting jurisdictions. This information shall be submitted to Bonneville no later than [November 15, of the current calendar year].

2. Any jurisdiction considering adoption shall adopt and enforce the code by [the plan implementation date specified in Appendix 8], for the utility to avoid a surcharge, if the utility will not be operating an approved utility MCS program or residential service standard at that time.

3. Bonneville will consider offering a grace period if Bonneville has not completed the EAP/NECP grant award process by [plan implementation date specified in Appendix 8]. Any such grace period will be considered in the event that Bonneville has received a plan by [plan submission date shown in Appendix 8], and the approval delay is due solely to Bonneville internal delay.

4. The customer shall provide Bonneville with the following information: (a) Total residential load, (b) the portion of the customer's residential load covered by this conservation strategy, and (c) total [retail] load.

5. Finally, the utility shall collect and provide to Bonneville the following data by January 30 of the following year:

- a. Total number of new homes (all fuels) constructed in the utility's service area during the past calendar year [single-family broken out by site-built, modular, and HUD-code homes, total multi-family].
- b. Total number of new electrically-heated homes constructed in the utility's



service area during the past calendar year [single-family broken out by site-built, modular, and HUD-code homes, total multi-family].

c. Total number of new electrically-heated homes constructed, in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan [single-family broken out by site-built, modular, and HUD-code homes, total multi-family].

Customers who are operating a utility program and/or a utility service standard should take all necessary steps in order to avoid double-counting when reporting the above information.

#### B. Commercial

1. To avoid a surcharge, customers with jurisdictions within their service area considering enrolling in this program shall notify Bonneville by [the plan submission date specified in Appendix 8], of the jurisdiction's intent to enroll in the program and the jurisdiction shall have officially adopted and be able to enforce the MCS by [the plan implementation date specified in Appendix 8], if the utility is not operating an approved Commercial MCS Program or commercial service standard.

2. Customers with jurisdictions within their service area who are currently participating in the Early Adopter Program, the customer shall provide a copy of Bonneville's letter of approval. In addition, customers shall provide the following information: (a) The customer's total commercial load, (b) the portion of the customer's commercial load covered by this conservation strategy, and (c) total [retail] load.

3. Finally, the utility shall collect and provide to Bonneville by January 30 of the following year by January of the following year:

a. Total number of new commercial buildings (all fuels) constructed in the utility's service area during the past calendar year.

b. Total number of new electrically-heated commercial buildings constructed in the utility's service area during the past calendar year.

c. Total number of new commercial buildings constructed, in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan, broken out by Bonneville prototype.

Customers who are operating a utility program and/or a utility service standard should take all necessary steps in order to avoid double-counting when reporting the above information.

Those customers wishing to avoid a surcharge under this path shall agree by

[the plan submission date specified in Appendix 8], to enroll in the commercial program and shall have enrolled in the program no later than [the plan implementation date specified in Appendix 8]. Bonneville will consider offering a grace period if Bonneville has not completed its Early Adopter Program grant award process by [implementation date specified in Appendix 8]. Any such grace period will be considered in the event that Bonneville has received a plan by [the plan submission date specified in Appendix 8], and the approval delay is due solely to Bonneville internal delay.

EAP/NWEC application materials can be obtained by contacting your nearest Bonneville Area or District Office.

#### *Appendix 4: Achieving Electrical Savings by Adopting A Codified Version of the MCS*

[If a customer is currently relying on jurisdictional participation in the Early Adopter Program as at least part of its Policy compliance approach for of the current calendar year must submit a letter by the plan submission date specified in Appendix 8, indicating that it intends to continue to rely on program participation to comply with the Policy for the following calendar year. At that time, the information requested in Sections A(5) and B(3) shall be submitted.]

#### A. Residential

1. Several codified versions of the MCS contained in the Early Adopter/ Northwest Energy Code Program (EAP/NECP) have been developed. These pre-approved codified versions of the Council's illustrative MCS paths. The options discussed in this appendix pertain to jurisdictions considering adopting, or who have adopted a codified version of the MCS. [Text Deleted]

2. Under this alternative, the customer must submit the codified version of the MCS which any jurisdiction in its service area is proposing for adoption or which has been adopted. The enforcement methods should be specified. [Text Deleted]

3. Finally, the customer shall provide Bonneville with the following information: (a) Total residential load, (b) the portion of the customer's residential load covered by this conservation strategy, and (c) total [retail] load.

4. By [the plan submission date specified in Appendix 8], the customer shall submit the above information to Bonneville. The statute or ordinance shall have been adopted and enforced by [the plan implementation date

specified in Appendix 8], unless a grace period, as provided for in Section 3 of the policy, has been granted.

5. In order to comply with the Council MCS reporting requirements as specified in their Plan Amendment, the utility shall collect and provide to Bonneville the following data by January of the following year:

a. Total number of new homes (all fuels) constructed in the utility's service area during the past calendar year [single-family broken out by site-built, modular, and HUD-code homes, total multi-family].

b. Total number of new electrically-heated homes constructed in the utility's service area during the past calendar year [single-family broken out by site-built, modular, and HUD-code homes, total multi-family].

c. Total number of new electrically-heated buildings constructed, in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan [single-family broken out by site-built, modular, and HUD-code homes, total multi-family].

Customers who are operating a utility program and/or utility service standard should take all necessary steps in order to avoid double-counting when reporting the above information.

#### B. Commercial

Under this alternative, the customer must submit the codified version of the MCS which a jurisdiction in its service area is proposing for adoption or which has been adopted. The enforcement methods must be specified. In addition, the customer must indicate what steps the jurisdiction will take to address IAQ and ventilation requirements of Bonneville's EAP/NECP. Finally, the customer shall provide the following information: (1) The customer's total commercial load, (2) the portion of the customer's commercial load covered by this conservation strategy, and (3) total [retail] load.

By [the plan submission date specified in Appendix 8], the customer must submit the above information to Bonneville. The statute or ordinance must be operative no later than [the plan implementation date specified in Appendix 8], unless a grace period, as provided for in Section 3 of the policy, has been granted.

Finally, the utility shall collect and provide the following data to Bonneville by January 30 of the following year:

1. Total number of new commercial buildings (all fuels) constructed in the utility's service area during the past calendar year.



2. Total number of new electrically-heated commercial buildings constructed in the utility's service area during the past calendar year.

3. Total number of new commercial buildings constructed, in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan, broken out by Bonneville prototype.

*Appendix 5: Achieving Electrical Savings by Adopting Alternative or Equivalent Building Codes*

An alternative code is designed to achieve total electrical savings which, when both sector's savings are combined, are at least as large as the electrical savings expected had the Council's residential and commercial MCS been implemented. A jurisdiction proposing to adopt an alternative code, in which one sector's total electrical savings is expected to exceed the target electrical savings level for that sector, can use those excess electrical savings to offset electrical savings below the target in the other sector. The alternative code path may be pursued by a jurisdiction only when the sum of each sector's savings at least equals the aggregate electrical savings target, which itself is based on the sum of the level of savings for the two sectors calculated using the Council's MCS. Section 3 of this policy discusses how the utility should approach the electrical savings equivalency analysis.

As compared to alternative codes, equivalent codes examine each sector individually. They differ from the pre-approved codified versions mentioned earlier, but provide equivalent savings. An equivalent code must achieve at least the same level of total savings, in each sector separately, as would have been achieved by implementing Bonneville's Super GOOD CENTS Program in the residential sector, and the Council's commercial MCS.

A customer must submit a copy of the alternative or equivalent code which a jurisdiction has proposed. In addition, the customer must indicate how the jurisdiction plans on maintaining IAQ and ventilation at 1983 levels. Finally, the customer shall provide Bonneville with the following information: (a) Total residential load, (b) total commercial load, (c) the portion of the customer's residential load covered by this conservation strategy, (d) the portion of the customer's commercial load covered by this conservation strategy, and (e) total [retail] load. Bonneville staff will attempt to assist customers and jurisdictions wishing to formulate improved building codes.

If an alternative code path is pursued, customers are encouraged to submit their alternative codes at the earliest possible date, but no later than [the plan submission date specified in Appendix 8]. Both codes would have to be implemented and enforced by [the plan implementation date specified in Appendix 8], unless a grace period, as provided for in Section 3 of the policy, has been granted.

Customers currently relying on jurisdictional participation in the Early Adopter/Northwest Energy Code Program as at least part of its Policy compliance approach for the current calendar year must submit a letter indicating that it intends to continue to rely on that program participation to comply with the Policy for the following calendar year. At that time, the utility shall submit all available information for the preceding calendar year, on (a) the total number of new residential dwelling constructed, and (b) the number of such dwellings which use electric heat.

For either the equivalent or alternative code approaches, the customer must submit its residential and commercial plans by [the plan submission date specified in Appendix 8]. The codes must be implemented and enforced by [the plan implementation date specified in Appendix 8], unless a grace period, as provided for in Section 3 of the Policy, have been granted. Finally, the utility shall collect and provide to Bonneville, by January 30 of the following year:

A. Total new homes and commercial buildings (all fuels) constructed in the utility's service area during the past calendar year (for residential, broken out by single-family [modular, HUD-code homes, site-built], and multi-family).

B. Total new electrically-heated homes and commercial buildings constructed in the utility's service area during the past calendar year (for residential, broken out by single-family [modular, HUD-code homes, site built], and multi-family).

C. Total new electrically-heated homes and commercial buildings, constructed in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan (for residential, broken out by single-family [modular, HUD-code homes, site-built], and multi-family; for commercial, broken out by Bonneville prototype by square footage).

Customers who are operating a utility program and/or a utility service standard should take all necessary steps

in order to avoid double-counting when reporting the above information.

For a more complete discussion of the data required to evaluate an alternative or equivalent code, refer to the latest version of Bonneville's MCS Code Equivalency Determination Procedures. A copy of these procedures can be obtained by contacting your nearest Bonneville Area or District Office.

*Appendix 6: Achieving Electrical Savings by Adopting a Codified Version of the MCS as a Utility Service Standard<sup>1</sup>*

[If a utility is currently relying on a utility service standard as at least part of its Policy compliance approach for the current calendar year, all the utility need do is submit a letter indicating that it wishes to continue to rely on that approach to comply with the Policy for the following calendar year.]

A. Residential

This path essentially involves adoption of a legally enforceable electric utility hook-up standard for new electrically-heated residential buildings. The customer would simply decline to serve new electrically-heated buildings not built to the standard's specifications. A grace period would be allowed for buildings considered by Bonneville to be "under construction" at the time the standard was adopted. The adoption of a utility service standard may qualify the utility for participation in Bonneville's Early Adopter/Northwest Energy Code Program.

Customers wishing to avoid a surcharge with this approach shall submit a residential plan by [the plan submission date specified in Appendix 8], and the residential service standard shall be adopted and enforced by [the plan implementation date specified in Appendix 8], unless a grace period, as provided for in Section 3 of the policy, has been granted. A plan must contain: (1) A copy of the standard to be imposed, (2) how the customer plans on monitoring compliance with the standard, and (3) what IAQ measures and activities will be pursued to at least

<sup>1</sup> Many customers have questioned whether they have legal authority, under State laws, to impose such a service requirement. Bonneville has examined this question under the State laws of Oregon, Washington, Idaho, and Montana and has reached the tentative conclusion that no clear legal impediments exist in these States to conservation-oriented utility service requirements. While Bonneville does not offer legal advice to customers, particularly on questions of State law, Bonneville legal staff are available to discuss these preliminary conclusions with customers and their legal counsel. Any utility considering such a path should obtain independent legal advice on this question.



achieve IAQ and ventilation levels of Super GOOD CENTS construction. Finally, the customer shall provide Bonneville with the following information: (a) Total residential load, (b) the portion of the customer's residential load covered by this conservation strategy, and (c) total [retail] load.

No surcharge will be imposed on any customer relying on such a service requirement which is subsequently enjoined or invalidated by court action. In such an event, the customer will be given a reasonable period of time to choose and implement another option.

Finally, the customer shall submit to Bonneville the following data by January 30 of the following year:

1. Total new homes (all fuels) constructed in the utility's service area during the past calendar year (for residential, broken out by single-family [modular, HUD-code homes, site-built], and multi-family).

2. Total new electrically-heated homes constructed in the utility's service area during the past calendar year (for residential, broken out by single-family [modular, HUD-code homes, site-built], and multi-family).

3. Total new electrically-heated homes constructed in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan (for residential, broken out by single-family [modular, HUD-code homes, site-built], and multi-family).

#### B. Commercial

This path essentially involves adopting a legally enforceable electric utility hook-up standard for new electrically-heated commercial buildings at least equal to the Council's commercial MCS. The customer would simply decline to serve new electrically-heated buildings not built to the standard's specifications. A grace period would be allowed for buildings considered by Bonneville to be "under construction" at the time the standard was adopted.

Customers wishing to avoid a surcharge with this approach shall submit a Commercial plan by [the plan submission date specified in Appendix 8], and the commercial service standard shall be adopted and enforced by [the plan implementation date specified in Appendix 8], unless a grace period, as provided for in Section 3 of the policy, has been granted. A plan must contain: (1) A copy of the standard to be imposed, and (2) indicate how the customer plans on monitoring compliance with the standard. Finally, the customer shall provide the following information: (1) The customer's total commercial load, (2) the portion of the customer's commercial load covered by this conservation strategy, and (3) total

[retail] load. No surcharge will be imposed on any customer relying on such a service requirement which is subsequently enjoined or invalidated by court action. In such an event, the customer will be given a reasonable period of time to choose and implement another option.

Finally, the customer shall submit to Bonneville the following data by January 30 of the following year:

1. Total new commercial buildings (all fuels) constructed in the utility's service area during the past calendar year;

2. Total new electrically-heated commercial buildings constructed in the utility's service area during the past calendar year (broken out by Bonneville prototype).

3. Total new electrically-heated commercial buildings, constructed in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan (broken out by Bonneville prototype).

#### Appendix 7: Achieving Electrical Savings by Adopting an Alternative or Equivalent Utility Service Standard

This path is actually two alternative paths. If an equivalent utility service standard approach is pursued, a customer may choose to adopt a utility service standard which is not one of the codified versions, but which is expected to achieve at least the same level of total electrical savings in each sector separately as would have been achieved by adopting Bonneville's Super GOOD CENTS Program in the residential sector, and the Council's MCS for the commercial sector. Alternatively, the customer may choose to adopt utility service standards for the residential and commercial sectors which when taken together, achieves at least the same level of total electrical savings as would have been achieved had the customer adopted the Council's commercial and residential MCS. This latter option is referred to as an alternative utility service standard.

If a utility is currently relying on a utility service standard as at least part of its Policy compliance approach for of the current calendar year, all the utility need do is submit a letter indicating that it wishes to continue to rely on that approach to comply with the Policy for the following calendar year.

If an alternative or equivalent utility service standard approach is pursued, a customer shall submit to Bonneville (1) a copy of the proposed service standard(s), (2) a description of the enforcement method(s), (3) a description of the methods used to at least maintain IAQ and ventilation at 1983 levels, and (4) a copy of the analysis used to verify that the proposed service standard(s) will achieve the required total electrical savings. The customer shall also provide Bonneville with the following

information: (1) Total residential load, (2) total commercial load, (3) the portion of the customer's residential load covered by this conservation strategy, (4) the portion of the customer's commercial load covered by this conservation strategy, and (5) total [retail] load. Bonneville staff will attempt to assist customers and jurisdictions wishing to formulate improved building codes. This material shall be submitted by [the plan submission date specified in Appendix 8], and both service standards shall be adopted and enforced by [the plan implementation date specified in Appendix 8]. [Text Deleted]

Finally, the customer shall submit to Bonneville the following data by January 30 of the following year:

A. Total new homes and commercial buildings (all fuels) constructed in the utility's service area during the past calendar year (for residential, broken out by single-family [modular, HUD-code homes, site-built], and multi-family).

B. Total new electrically-heated homes and commercial buildings constructed in the utility's service areas during the past calendar year (for residential, broken out by single-family [modular, HUD-code homes, site-built], and multi-family).

C. Total new electrically-heated homes and commercial buildings, constructed in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan (for residential, broken out by single-family [modular, HUD-code homes, site-built]; for commercial, broken out by Bonneville prototype). For a detailed description of the data required to evaluate an alternative or equivalent code, and the evaluation criteria, the customer and/or jurisdiction is advised to consult the latest version of Bonneville's MCS Code Equivalency Determination Procedures. A copy of these procedures can be obtained by contacting your local Bonneville Area or District Office.

#### Appendix 8: Submittal and Compliance Schedule for MCS Surcharge

Customers are to submit plans for both the residential and commercial sectors by the plan submission date of November 15, 1988. Those plans should conform with the requirements of the particular approach the customer is using for each sector, as indicated in the appropriate appendix to this policy. The plan implementation date is January 1, 1989.

James J. Jura,  
Administrator, Bonneville Power  
Administration.

[FR Doc. 88-18780 Filed 8-16-88; 9:32 am]  
BILLING CODE 6450-01-M